

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**ERICK COLLIER,**

**Plaintiff,**

**vs.**

**9:18-CV-990  
(TJM/TWD)**

**ANTHONY J. ANNUCCI, et al.,**

**Defendants.**

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**Thomas J. McAvoy,  
Sr. U.S. District Judge**

**DECISION & ORDER**

The Court referred this *pro se* civil action, brought pursuant to 42 U.S.C. § 1983, to Magistrate Judge Thérèse Wiley Dancks for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). Plaintiff alleges that the Defendants, New York State prison officials, violated his rights by failing to protect him from the toxic smoke caused by a fire at the Mid-State Correctional Facility.

Magistrate Judge Dancks's Report-Recommendation, dkt. # 20, issued on July 23, 2019, recommends that Defendants' motion to dismiss be granted. Magistrate Judge Dancks finds that Plaintiff failed to plausibly allege that Defendants knew of and disregarded and excessive risk to inmate health or safety, or that Defendants were personally involved in permitting the challenged conditions. Magistrate Judge Dancks further recommends that Plaintiff be permitted to file an Amended Complaint if he can

plausibly allege deliberate indifference and personal involvement.

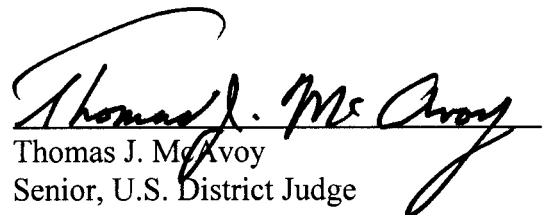
No party objected to the Report-Recommendation, and the time for such objections has passed. After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice and the Court will accept and adopt the Report-Recommendation for the reasons stated therein.

Accordingly,

The Report-Recommendation of Magistrate Judge Dancks, dkt. # 20, is hereby **ACCEPTED** and **ADOPTED**. Defendants' motion to dismiss, dkt. # 11, is hereby **GRANTED** without prejudice to Plaintiff filing an Amended Complaint. Should plaintiff choose to file an Amended Complaint, that Amended Complaint should be consistent with Magistrate Judge Dancks' recommendations and filed within 30 days of the date of this order. Plaintiff is advised that an amended complaint **supersedes in all respects** the prior pleading. Therefore, if plaintiff files an amended complaint, he **must properly allege in the amended complaint all factual bases for all claims asserted therein, and the amended complaint must be in compliance with Rules 8 and 10 of the Federal Rules of Civil Procedure.**

**IT IS SO ORDERED.**

**Dated:** August 19, 2019

  
Thomas J. McAvoy  
Senior, U.S. District Judge